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No. 91-1440

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

SCHNABEL FOUNDATION COMPANY,

Petitioner,

v.

HARBOR INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari to The United States Court of Appeals For the District Circuit of Columbia

OPPOSITION TO MOTION OF PETITIONER TO SEEK THE VIEWS OF THE UNITED STATES

Respondent, Harbor Insurance Company, by and through its undersigned counsel of record, hereby opposes Petitioner's Motion to Seek the Views of the United States, and in support thereof, states as follows:

Schnabel Foundation Company ("SFC") in its Motion, urges the Court to seek the views of the United States because: (1) U.S. Attorneys will be taking "an increased role in jury cases," pursuant to the Civil Rights Act of 1991, and (2) because the 1991 amendments to the Federal Rules of Civil Procedure were "prospectively and wrongly interpreted by the court of appeals in this case." SFC's motion, however, should be summarily rejected for at least two distinct reasons.

First, this case does not involve the 1991 Amendments to the Federal Rules of Civil Procedure.[1] The Circuit Court referred to the Amendments in support of its ruling, but the case itself was decided under the pre-amendment rules. Consequently, the Circuit Court's "prospective interpretation" of the amended rules, as it is euphemistically characterized by SFC, is nothing more than dicta, which is not, and should not be permitted to become, the focal point of SFC's petition.

Second, SFC's Motion appears to be designed for delay, more than any other purpose. With or without the changes wrought by the Civil Rights Act of 1991, the United States is, and always has been, "subjected to jury trials on a regular basis." Presumably, if it were dissatisfied with the rule now being adopted by the D.C. Circuit, it could have raised the issue in one of the other circuits to adopt the same standard. Indeed, insofar as the rule adopted by the D.C. Circuit does, in fact, conform with the "vast weight of authority" concerning the appropriate standard of review, the United States would have had multiple opportunities in the past to make its views known.

In summary, the issues presented by SFC's petition have been adequately briefed by the parties, and this proceeding should not be burdened with unnecessary amicus filings and suggestions of interest. No valid reason exists for delaying this matter in order to solicit the views of the United States. This is a civil proceeding between two private parties -- the resolution of which is already long overdue. It should not be

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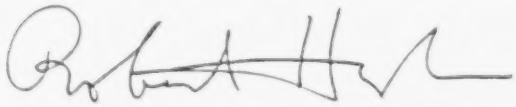
1/ The Court of Appeals decision was issued on October 15, 1991, while the amendments to the Federal Rules of Civil Procedure did not take effect until December 1, 1991.

delayed any further to accommodate hypothetical musings over "prospective interpretations."

WHEREFORE, Respondent Harbor Insurance Company requests that SFC's Motion to seek the views of the United States be denied.

Respectfully submitted,



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Dated: April 29, 1992

CERTIFICATE OF SERVICE

I hereby certify that in accord with Supreme Court Rule 29, a service of the foregoing Opposition to Motion of Petitioner to Seek the Views of the United States was made by deposit of three copies in the United States mail, with First-Class postage prepaid, on this 29th day of April 1992, addressed to each of the following parties:

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